

ENTERED

January 16, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

JARVIS DUGAS,

Plaintiff,

VS.

THE STATE OF TEXAS, *et al*,

Defendants.

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CIVIL NO. 2:19-CV-16

ORDER

The Court is in receipt of the Magistrate Judge's July 11, 2019 Memorandum and Recommendation to Dismiss Certain Claims and to Retain Case ("M&R 1"). Dkt. No. 15. The Court is also in receipt of Jarvis Dugas's ("Dugas") objections to the M&R, Dkt. Nos. 22, 25, 27, 28, 29, 30, 46, 48. The Court is in receipt of the July 23, 2019 Memorandum and Recommendation to Deny Plaintiff's Motion for Relief from Judgment and Motion of Injunction ("M&R 2"), Dkt. No. 21. The Court is in receipt of Dugas's objections to M&R 2, Dkt. Nos. 24, 31, 45.

I. M&R 1

M&R 1 subjects Dugas's claims to screening under the Prison Litigation Reform Act ("PLRA"). Dkt. No. 15; *see* 28 U.S.C. §§ 1915(e)(2), 1915A. The Magistrate Judge recommended that:

"[C]ertain excessive force claims raised by Plaintiff be retained against several defendants in their individual capacities. It is respectfully recommended further that: (1) Plaintiff's claims for money damages against all individual Defendants in their official capacities be dismissed as barred by the Eleventh Amendment; and (2) Plaintiff's claims against the State of Texas and seven state entities be dismissed as barred by the Eleventh Amendment. Lastly, it is respectfully recommended that Plaintiff's remaining claims against the remaining individual defendants be dismissed for failure to state a claim and/or as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1)."

Dkt. No. 15 at 2.

a. Legal Standard

Any prisoner action brought under federal law must be dismissed if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2), 1915A. The Court reviews objected-to portions of a Magistrate Judge's proposed findings and recommendations de novo. 28 U.S.C. § 636(b)(1). But if the objections are frivolous, conclusive or general in nature the court need not conduct a de novo review. *Battle v. United States Parole Comm'n*, 834 F.2d 419 (5th Cir. 1987). When proceeding in forma pauperis, a plaintiff's allegations must be weighted in the plaintiff's favor when a court conducts a frivolousness review. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

In his objections, Dugas correctly cites to *Haines*, a case which states the standard for stating a claim and the less stringent standard for pro se complaints. *Haines v. Kerner*, 404 U.S. 519 (1972). But *Haines* does not alter the outcome of the screening of his case, as the Magistrate Judge has appropriately recommended dismissing those claims which fail to state a claim for which relief can be granted. *See* Dkt. No. 15.

After reviewing Dugas's lengthy objections the Court concludes that they are either frivolous, conclusive, repetitive and all adequately addressed in M&R 1. *See* Dkt. Nos. 15, 22, 25, 27, 28, 29, 30, 46, 48; *Battle*, 834 F.2d 419. The Court understands it may be challenging for a pro se complainant to litigate by hand written documents, but Dugas is encouraged to write legibly and concisely in his future court filings.

After independently reviewing the record and considering the applicable law, the Court **ADOPTS** M&R 1 in its entirety, Dkt. No. 15, and **OVERRULES** Plaintiff's objections, Dkt. Nos. 15, 22, 25, 27, 28, 29, 30, 46, 48.

II. M&R 2

M&R 2 addresses Dugas's motions seeking relief from judgment and motion for injunction. Dkt. No. 21. The Magistrate Judge stated that Dugas mistakenly believed his claimed were dismissed or prevented from proceeding. *Id.* at 1. M&R 2

recommended that his motion for relief from judgment be denied as moot and his motion for injunction be denied. *Id.* at 2. Dugas also filed objections to M&R 2. Dkt. Nos. 24, 31, 45. After reviewing Dugas's objections, the Court concludes that they are frivolous. *See* Dkt. Nos. Nos. 24, 31, 45; *Battle*, 834 F.2d 419.

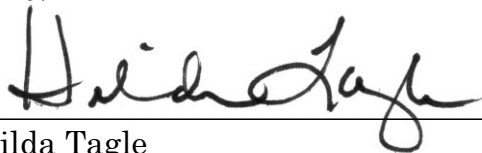
After independently reviewing the record and considering the applicable law, the Court **ADOPTS** M&R 2 in its entirety, Dkt. No. 21, and **OVERRULES** Plaintiff's objections, Dkt. Nos. Nos. 24, 31, 45.

III. Conclusion

After independently reviewing the record and considering the applicable law the Court **ADOPTS** M&R 1, Dkt. No. 15, and M&R 2, Dkt. No. 21 in their entirety. The Court **OVERRULES** Plaintiff's objections. Dkt. Nos. 22, 24 25, 27, 28, 29, 30, 31, 45, 46, 48. The Court hereby:

- **RETAINS** Plaintiff's excessive force claims against Defendants David Holderfield, Matthew T. Michael, Steven Ekearel, Skinner Sturgis, and Russell Landry
- **DISMISSES** Plaintiff's claims for money damages against all individual Defendants in their official capacities as barred by the Eleventh Amendment
- **DISMISSES** Plaintiff's claims against the State of Texas and seven state entities as barred by the Eleventh Amendment.
- **DISMISSES** remaining claims against individual defendants with prejudice for failure to state a claim or frivolousness.

SIGNED this 16th day of January, 2020.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', written over a horizontal line.

Hilda Tagle
Senior United States District Judge